



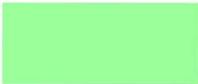
U.S. Citizenship
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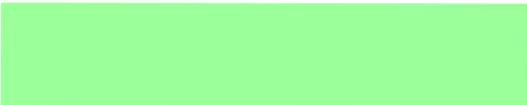


Date: **APR 08 2013**

Office: CIUDAD JUAREZ, MEXICO

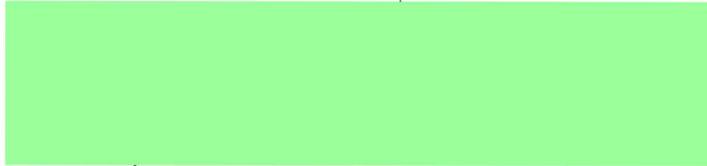
FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure from the United States; and section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for being removed from the United States and subsequently entering the United States without inspection. The record indicates that the applicant is married to a lawful permanent resident of the United States and is the mother of two U.S. citizen children. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her spouse and children.

The Field Office Director determined that the applicant had failed to establish extreme hardship to her qualifying relative, and since she is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, she is ineligible for a waiver. *Decision of the Field Office Director*, dated July 31, 2012. She denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Id.*

On appeal, the applicant, through counsel, claims that the applicant's husband will suffer extreme hardship if the applicant's waiver application is denied. *Form I-290B, Notice of Appeal or Motion*, dated August 27, 2012. Additionally, counsel claims that since it has not been established that the applicant was expeditiously removed in 2005, she is not inadmissible to the United States pursuant to section 212(a)(9)(C)(i) of the Act. *Counsel's brief*, dated November 30, 2012.

The record establishes that on May 27, 2005, the applicant was apprehended attempting to enter the United States without inspection by concealing herself under the rear seat of a vehicle. The applicant claimed her name was [REDACTED] and her date of birth was February 27, 1985. See *Form I-213, Record of Deportable/Inadmissible Alien*, dated May 27, 2005. An order of removal under section 235(b)(1) of the Act was entered against the applicant on May 27, 2005, and she was expeditiously removed the same day. See *Form I-860, Notice and Order of Expedited Removal*, dated May 27, 2005. She reentered the United States without inspection in June 2005. Based on the record, the AAO affirms the Field Office Director's finding that the applicant is inadmissible to the United States under section 212(a)(9)(C)(i) of the Act, for being expeditiously removed from the United States and reentering without inspection.

Section 212(a)(9) of the Act states, in pertinent part:

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

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(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

- (i) Exception.—Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if . . . the Secretary has consented to the alien's reapplying for admission.

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than 10 years since the date of the alien's last departure from the United States. See *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least ten years ago, the applicant has remained outside the United States and United States Citizenship and Immigration Services has consented to the applicant's reapplying for admission. In the present matter, the applicant's last departure from the United States occurred on May 27, 2005, and therefore, she has not remained outside the United States for 10 years since her last departure. She is currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating her waiver under section 212(a)(9)(B)(v) of the Act. The appeal will be dismissed.

ORDER: The appeal is dismissed.